IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.974 OF 2006

1. Sujan Singh Mangal Singh Rajput
2. Sukhram Jugtaram Choudhary ... Applicants.

vs.

The State of Maharashtra. ...Respondent

Mr.Subhash Jha, Ghanshyam Upadhyay, Jimesh Shah, Gaurav Agarwal and Ms.Lakshmi Menon i/b. Law Global, for Applicants.

Mr.Vinod Bhagat, for Original Complainant.

Ms.Rajeshree M. Gadhavi, APP for State-Respondent.

CORAM: V.M.KANADE,J.

DATED: 31st March,, 2006

P.C.:-

1. Heard the learned Counsel appearing for applicants and the learned Counsel appearing for Complainant and A.P.P. for the State. This is an application for anticipatory bail filed by the applicants who have an apprehension that they are likely to be arrested in connection with the offences registered with the Colaba Police Station under M.E.C.R.no.11 of 2005 for the offence punishable under Section

63 and 65 of the Copy Rights Act read with Section 103, 104 of the Trade Marks Act read with Section 420 and 486 of I.P.C.

2. It is the case of the applicants that they have been purchasing the goods of “AAI JEE” brand from Ranjit Screw Factory and selling the same in the wholesale market. While purchasing that goods they used to obtain invoices in respect of the said transaction from Ranjit Screw Factory and accordingly, used to pay octroi charges. It is their case that they are carrying on the business in the name and style as “Anupam Sale Agency”and they used to purchased machine tools and goods from the manufacturers and sell them in the wholesale market. According to the applicants, they are dealers of manufacturer of those goods viz. Ranjit Screw Factory.

3. A complaint was filed before the Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Mumbai by Mulji Gobarji Chowdhary who is a proprietor carrying on business in the name and style AAI Mata Hardware. The complaint is filed against Ranjit Screw Factory (India) and other unknown persons. It is alleged in the complaint, more particularly in paragraph 10, that certain unscrupulous manufacturers with an ulterior motive of encashing on the complainant concern's unparalleled goodwill and reputation, have been falsifying and falsely using the mark and artwork AAI JEE in relation to their inferior quality goods, and the said infringers are

deliberately and knowingly copying the trade mark and artwork of the complainant concern in a manner reminiscent of the complainant concern. The complainant has stated in the complaint that the trade mark AAI JEE is registered in the name of the complainant concern on 12.10.2001 and the said registration is valid and subsisting and is in force. It is further stated that said Trade Mark is represented by the complainant concern on its carton packings in a stylized label being an original work of art within the meaning of the provisions of Section 2 (c) of the Copyright Act, 1957 and therefore, the complainant concern claimed a subsisting copyright in the same. In the complaint in paragraph 10 it is further mentioned that Ranjit Screw Factory (India) was manufacturing the aforesaid goods for the complainant from the year 2000 to 2001 and was undertaking the job work of manufacturing the aforesaid goods under the complainant's trade mark and this work was carried out only at the behest of the complainant. It is admitted in the complaint that said Ranjit Screw Factory (India) had in the year 2001 exchanged correspondence by way of notices with the complainant concern, claiming a right over the mark “AAI JEE” of the complainant concern. It is further submitted in paragraph 10 of the complaint that the complainant concern and the said Ranjit Screw Factory (India) based in Amritsar have filed cross oppositions and cases which were pending with the Registrar of Trade Marks which were filed by the complainant and said Ranjit Screw Factory against

each other. After having read these submissions, it is further stated that inspite of these pending cases, the complainant however alleges that Ranjit Screw Factory is the infringer of his trade mark. After the said complaint was filed, the learned Metropolitan Magistrate passed an order directing the police to investigate the case under Section 156 (3) of Cr.P.C. Accordingly, Colaba Police Station registered a complaint vide MECR No.11 Of 2005.

4. The order was passed by the Metropolitan Magistrate on 30.11.2005 and the opinion was obtained by the Assistant Commissioner of Police from the Registrar wherein the Registrar mentioned that the complainant had valid and subsisting registration and that Ranjit Screw Factory(India) also had filed opposition which was pending. The opinion does not in any way reflect that any permission was granted for search and seizure of any property. The investigating officer, however, on the basis of this opinion, raided the premises of the applicants and even seized certain cartons whereon labels of AAI JEE were pasted. Thereafter, the application for anticipatory bail was filed before the Sessions Court. The said application was rejected. Against the said order the present application has been filed.

5. I have heard the learned Counsel appearing for applicants

and the learned Counsel appearing for the complainant and APP for the State, at length. The contention of the applicants is that Ranjit Screw Factory is prior user of the trade mark since 1990 and that the record indicates that the complainant was using it since 1994. It is settled position in Law that prior user had right to use the trade mark even if it is not registered. The learned Counsel appearing for the applicants submitted that in the year 1998 the said Trade mark was registered as Copyright by Ranjit Screw Factory and further an application was also made, when they came to know that the complainant had registered the same symbol as trade mark in the year 2001, for rectification. It is submitted that since the complainant did not file any opposition within time, the Trade mark was construed to be suspended. It is submitted that thereafter the complainant filed a Review petition and the said Review petition admittedly is pending and not yet decided. It is further submitted that Ranjit Screw Factory (India) issued a public notice warning the public at large that they are entirely using the said symbol. Similar notices were also issued by the complainant thereafter. It is, therefore, submitted that the applicants were merely dealers of the goods which were manufactured by Ranjit Screw Factory. It is submitted that initially the applicants were working with the complainant. However, thereafter they started their own business and were dealing and selling the screw manufactured by the other manufacturers. It is submitted that the main dispute was

between the complainant and Ranjit Screw Factory (India) and the said dispute is pending. The learned Counsel appearing for the complainant on the other hand submitted that even if the trade mark was registered as Copyright by Ranjit Screw Factory in the year 1998, the scope and operation of two Acts namely Copyrights Act and the Trade Marks Act operate in different spheres, and the registered Trade Mark had better right over and above the copy mark which was registered as Copyright. In support of his submission, he relied on the judgment of Delhi High Court and the Opinion Report of the Registrar. He invited my attention to the observation made by the learned Single Judge of Delhi High Court wherein the scope of the Two Acts was considered and in the said case injunction was granted in favour of the persons who had registered trade mark. It is submitted that therefore, merely because the said Ranjit Screw Factory had registered its trade mark as copyright it did not give better right to them over the said trade mark. It is further submitted that the case of the applicants that they had purchased goods from Ranjit Screw Factory, is not established, particularly, if the invoices which were annexed to the application are closely scrutinised. It is submitted that it was easily possible for the applicants to put the labels on the cartons in Bombay and therefore, they are also equally liable under the provisions of Section 104 of the Trade Mark Act for preparing false trade mark. Heard the learned A.P.P. Perused the affidavit in reply of the Assistant

Commissioner of Police Mr.Mohan Motiram Rathod wherein he has stated that he has taken search pursuant to the opinion given by the Registrar of Trade Marks wherein he has stated that right of complainant is subsisting and his interest is required to be protected.

6. In my opinion, after having considering all these submissions, prima facie case is made out by the applicants for grant of anticipatory bail for the following reasons:-

(i) Though it is settled position in Law that action for the infringement of Copyright or Trade mark can be taken by filing Civil Suit and criminal case and it is not essential that initially the Civil Court should give findings in respect of infringement of trade-mark right of a particular party and only thereafter criminal complaint can be filed. The new Act of 1999 seeks to harmonise the provisions of the Copyright Act and the provisions of Section 103 & 104 of the Trade Mark Act,1999 and in that new Act, additional safeguards have been made regarding cognizance of the cases being taken either by the Magistrate or by the Police and the elaborate procedure is laid down under Section 115 of the Act regarding method and the manner in which the cognizance is to be taken by the Magistrate and by the police. It is no doubt true that the opinion which is given by the Registrar does not indicate that the Registrar had given permission to the Investigating Officer to conduct search and seizure, yet the

Registrar appears to have given his opinion that the complainant has subsisting right which was required to be protected.

(ii) However, the facts remain that the complainant himself had admitted in paragraph 10 of the complaint that there was subsisting dispute between Ranjit Screw Factory and the complainant since 2001 and that the notices had been issued by Ranjit Screw Factory and the cases and the counter cases have been filed by them which are still pending. Without going into the aspect as to whether Ranjit Screw Factory has right of prior user or the complainant has a better title as alleged in the complaint, it would be sufficient to mention that the fact remains that there is a pending dispute between the aforesaid two parties.

In the light of these facts, it has to be seen whether the applicants can be said to be prima facie concerned in the act of preparing and falsifying the trade mark. What has been seized from the premises was merely cartons with labels showing the Trade mark "AAI JEE". The applicants may have been working with the complainant earlier and they may have been removed on account of certain mistakes on their part, however that does not deprive them from their right to carrying on business of their choice. Prima facie it appears that they are merely dealers. The complaint essentially is filed against Ranjit Screw Factory and unknown persons. As per the

complainant, if the unknown persons in the complaint means the present applicants, he ought to have mentioned their names in the complaint itself which for the reasons best known he has chosen not to do so. The fact that the opinion was obtained from the Registrar and promptly thereafter the premises of the applicant was raided, clearly shows that the complainant was very well aware that the applicants were dealing in the said goods. There was no reason why therefore, their names were not mentioned in the complaint. In any case the dispute between two parties is pending. The applicants are not in any way concerned with the said dispute. Therefore, their custodial interrogation, in my view, is not necessary. The Trial Court has not taken into consideration the submission of the applicants regarding prior user by Ranjit Screw Factory and has only taken into consideration the submission of the complainant and the investigating officer. The trial Court appears to have been more influenced by the fact that the applicant did not remain present when the matter was kept for hearing and it appears that it was one of the facts which weighed with the Sessions Court while rejecting the application. In my view, the Sessions Court clearly erred in not taking into consideration the other aspects of the pendency of dispute between Ranjit Screw Factory and the complainant which himself has admitted in paragraph 10 of the complaint. This clearly reflects total non application of mind on the part of the Sessions Court. In my view,

though the provisions of Section 438 of Cr.P.C. have been amended so far as the State of Maharashtra is concerned and the additional provision has been made making it obligatory for the applicants to remain present in the Court if objection is taken by the Public Prosecutor. In my view the said provision should not be construed to mean that if the applicant remained absent for a day when he was directed to remain present that itself could be a ground for rejecting the application for anticipatory bail. In large number of cases which come from the Sessions Court, on many occasions the Court appears to reject the applications merely because the direction which were given by the Court to the applicants are not complied with and on non compliance, the anticipatory bail application is either not heard or rejected summarily.

In these circumstances, I proceed to pass the following order:-

1. In the event of arrest of the applicants in connection with M.E.C.R.no.11 of 2005 registered with the Colaba Police Station, they would be released on bail in the sum of Rs.10,000/- each with one or two sureties in the like amount.

2. The applicants shall initially report to the Investigating officer at Colaba Police station for a period of Eight days from 3rd April,2006 between 11 a.m. To 5 p.m. and they shall co-operate with the investigating officer. They shall thereafter report to the

Investigating officer as and when called , till the chargesheet is filed. The Investigating officer, however, shall call them during the business hours i.e. between 11 a.m. To 5 p.m.

3. It is made clear that the Trial Court shall not be influenced by the observations made by this Court while disposing of this application and the same shall not be construed to mean as an expression of opinion on merits of the case and it shall decide the case on its own merit and in accordance with law.

With these directions the application is disposed of.

(V.M.Kanade, J.)